



Virginia
Regulatory
Town Hall

Emergency Regulation Agency Background Document

Agency Name:	Board of Dentistry, Department of Health Professions
VAC Chapter Number:	18 VAC 60-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Dentistry and Dental Hygiene
Action Title:	General supervision of dental hygienists
Date:	6/29/02

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

Emergency Preamble

Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency. Section 9-6.14:4.1(C)(5) of the Administrative Process Act states that an "emergency situation" means: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. The statement should also identify that the regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).

Please include a brief summary of the emergency action. There is no need to state each provision or amendment.

Chapter 170 of the 2002 Acts of the Assembly mandates that the board promulgate regulations to implement provisions of the act permitting certain practices of a dental hygienist to be performed under general supervision. The enactment clause on the bill required the board to adopt regulations within 280 days, which authorizes the adoption of emergency regulations; and it is the board's intent to replace those regulations with permanent regulations.

Basis

Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.

Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.

The legal authority to promulgate the emergency regulation is in second enactment clause of Chapter 170 states that: That the Board shall promulgate regulations to implement the provisions of this act within 280 days of its enactment.”

<http://leg1.state.va.us/cgi-bin/legp504.exe?021+ful+CHAP0170>

The Office of the Attorney General has certified that the “emergency situation” which exists is specified in § 2.2-4011 of the Code of Virginia as one in which the agency is required by statutory law to have a regulation in effect within 280 days from the enactment of the law.

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-4011>

Substance

Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of Virginians. The statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

Chapter 170 of the 2002 Acts of the Assembly provides for practice by dental hygienists under general supervision by a dentist. Amendments to implement the provisions of Chapter 170 are outlined as follows:

18 VAC 60-20-10. Definitions.

To clarify the use of the term “general supervision,” the Board has added a definition that is consistent with the meaning attributed in § 54.1-2722 of the Code of Virginia. “General supervision” is defined as meaning that the dentist has evaluated the patient and prescribed authorized services to be provided by a dental hygienist without the requirement for the dentist to be present in the facility while the authorized services are being provided.

18 VAC 60-20-200. Employment of dental hygienists.

The current regulation restricts to two the number of hygienists that a dentist can personally direct at one and the same time. To allow for expansion of dental services by hygienists working under general supervision, the amended regulation allows the dentist to have an additional two dental hygienists working under general supervision at any one time.

18 VAC 60-20-210. Requirements for direction and general supervision.

- Current regulations provide that dental hygienists and assistants may only engage in their respective duties under the direction and control of the dentist, and the dentist has to be present and evaluate the patient during the time the patient is in the facility. Since the amended law now permits practice under general supervision, the requirement for the dentist to always be present in the facility has been eliminated.
- Since the Board has determined that there are certain procedures that should not be delegated to a dental hygienist under general supervision, it has provided that the duties performed under direction must only be performed when the dentist is present in the facility and available to evaluate the patient during the time services are being provided.
- Those duties that may be delegated to a dental hygienist under general supervision can only be performed if 1) the treatment has been prescribed by a licensed dentist licensed in writing with the services to be rendered within a specific time period, not to exceed seven months; 2) the dental hygienist has consented to providing services under general supervision.; 3) the patient or a responsible adult has been informed prior to the appointment that no dentist will be present, that no anesthesia can be administered, and that only those services prescribed by the dentist will be provided; and 4) written basic emergency procedures have been established and the hygienist is capable of implementing those procedures. General supervision cannot replace the use of direction when, in the professional judgment of the dentist, direction is necessary to meet the individual needs of the patient.

18 VAC 60-20-220. Dental hygienists.

- Amended regulations provide that the following duties can only be delegated to dental hygienists under direction with the dentist being present. Those include any scaling and root planing requiring the administration of anesthesia; the performance of an initial examination of teeth and surrounding tissues for assisting the dentist in the diagnosis; and subgingival irrigation or subgingival application of Schedule VI medicinal agents.
- In addition, there is a new listing of duties that can only be delegated to dental hygienists and may be delegated by written prescription to be performed under general supervision without the dentist being present. Those include scaling and root planing of natural and restored teeth without anesthesia; polishing of natural and restored teeth; and performing a clinical examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets or other abnormal conditions for further evaluation and diagnosis by the dentist. The dentist may delegate under general supervision any other duties appropriate to the education and experience of the dental hygienist and the practice of the supervising dentist, with the exception of those specifically restricted to be performed under direction and those listed as nondelegable.

- Nothing in this section should be interpreted so as to prevent a licensed dental hygienist from providing services currently within his scope of practice including educational services, assessment, screening or data collection for the preparation of preliminary written records for evaluation by a licensed dentist.

Provisions in the amended regulation for an evaluation and prescription for services prior to having the patient treated under general supervision are intended to ensure that the quality of care and the health and safety of patients is being protected. To ensure that the patient is aware of the implications of general supervision, regulations require that the patient or a responsible adult is informed that a dentist will not be present and that no anesthesia can be used. Likewise, the Board determined that some procedures, especially those that involve the administration of drugs, are not appropriate to delegate under general supervision.

Alternatives

Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.

There were no alternatives to adoption of a regulation as it was mandated by Chapter 170 of the 2002 Acts of the Assembly. The Board did address several issues that arose during the development of regulations. To ensure that varying opinions were adequately considered, the Board heard public comment on the legislation and/or draft regulations at four public meetings and also solicited written comment prior to the adoption of emergency regulations. Prior to the introduction of Senate Bill 503, a task force of the Virginia Dental Association (VDA) with involvement of several hygienists recommended that the group rescind its previous position in opposition to general supervision and that general supervision be permitted if certain requirements were met. In developing regulations, the Board utilized the recommendation of the VDA as well as those of the Virginia Dental Hygienist Association (VDHA) for implementation of the legislation.

The major point of difference between the two professional groups involved the period of time within which the patient could be seen by a hygienist under general supervision following an evaluation and written prescription by the dentist. The VDA policy statement recommended that the patient be seen within 6 months of the prescription, and the VDHA recommended that the time period be 12 months for services rendered under general supervision. After much discussion, the Board agreed to a time requirement of 7 months that is intended to permit a patient to be seen approximately once a year by the dentist and once a year by the hygienist. (The additional month is intended to accommodate potential scheduling problems.)

The other issue that arose during development of regulations centered around which duties could be delegated under general supervision. Under the theory that root planing typically involves the use of anesthesia, the Regulatory Committee recommended that it be restricted to performance only under direction with the dentist present. Several dental hygienists testified that they do root planing without anesthesia and that it should be delegable under general supervision. To accommodate that practice and continue to protect patients, the regulations specify that scaling and root planing not requiring anesthesia could be done under general supervision, but that the

patient must be informed prior to the procedure that no dentist will be present and no anesthesia can be used.

With the passage of Senate Bill 503 (Chapter 170 of the 2002 Acts), the Board is mandated to promulgate regulations implementing provisions of the laws within 280 days. It has also adopted a Notice of Intended Regulatory Action to receive comment on its intent to replace the emergency regulations with permanent regulations.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the emergency action on the institution of the family and family stability including to what extent the action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulatory action would not strengthen or erode the authority and rights of parents, encourage or discourage economic self-sufficiency, strengthen or erode the marital commitment or increase or decrease disposable family income. The ability of dental hygienists to provide prescribed service in settings where a dentist is not readily available may benefit some persons who have limited access to such services.